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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MICROSPHERIX LLC.,

Plaintiff,

v.

MERCK SHARP & DOHME CORP., MERCK
SHARP & DOHME B.V., AND ORGANON
USA, INC.

Defendants.

Civil Action No. 2:17-cv-03984-CCC-MF

**STIPULATED ORDER DISMISSING WITH PREJUDICE
COUNT II OF THE AMENDED COMPLAINT**

This stipulation is made by and between Plaintiff Microspherix LLC and Defendants Merck Sharp & Dohme Corp., Merck Sharp & Dohme B.V., and Organon USA, Inc. (collectively, “Defendants” or “Merck”). Plaintiff and Defendants, by and through their respective undersigned counsel in the above-captioned action, and subject to approval of the Court, stipulate and agree as follows:

1. Plaintiff's October 18, 2017 Amended Complaint in this action contains four counts: (1) Count I alleging infringement of U.S. Patent No. 9,636,402; (2) Count II alleging infringement of U.S. Patent No. 6,514,193 ("193 Patent"); (3) Count III alleging infringement of U.S. Patent No. 9,636,401; and (4) Count IV alleging infringement of U.S. Patent No. 8,821,835.

2. Merck filed four *Inter Partes* Review Petitions with the U.S. Patent and Trial Appeal Board ("PTAB") alleging that all asserted claims of the patents-in-suit are unpatentable. The PTAB instituted IPR proceedings on all four asserted patents.

3. Plaintiff subsequently cancelled the asserted claims of the '193 Patent.

4. Plaintiff therefore dismisses with prejudice Count II of the Amended Complaint. Plaintiff's remaining claims asserting infringement of patents other than the '193 Patent shall not be affected by this Stipulation.

AGREED AND CONSENTED TO BY:

Dated: June 29, 2020

s/ David Draper

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IT IS SO ORDERED.

HON. CLAIRE C. CECCHI
United States District Judge